



James C. Cantalini
Chief Executive Officer

April 28, 2003

To: Michael Powell, Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: CS Docket 97-80
PP Docket 00-67

Gist's Reply Comments to The Federal Communications Commission

"Compatibility Between Cable Systems and Consumer Electronics Equipment"

Dear Commissioners,

Founded in 1996 and based in downtown New York, Gist is an independent developer of program guides and related applications for television. Gist currently publishes a daily onscreen magazine, TVMAG, that can be seen in 5-million homes on the EchoStar Dish satellite service, and just under 1-million homes on Charter cable-TV. Gist is also deploying an electronic program guide for the StarChoice (Shaw) satellite service in Canada. Gist also has run a web site at Gist.com with some 4 million registered users.

While Gist applauds the recent "Plug and Play" agreement between the cable television and consumer electronics industries to allow true cable-ready TV sets, and recording devices, that can decode subscribed-to channels without the need for a cable-TV set top box, Gist is also concerned that consumers will not be able to enjoy the full power and capability this landmark agreement theoretically provides, unless it is also accompanied by a similar agreement to deliver unidirectional program guide data as part of Phase 1. Gist is thus requesting that unidirectional program guide data be included in the Phase 1 "Plug and Play" rulemaking.

Without such data, TV sets and other devices that comply with the agreement have no way of telling the viewer which program is on what channel at what time. While technically the cable-TV industry has complied with the letter of the Telecommunications Act, they are not complying with the spirit of the Act.

Without a program guide to navigate the hundreds of channels available on a modern digital cable-TV system, a television set is not truly "cable ready" or "Plug and Play."

**Gist Communications, Inc. -- 84 Wooster Street -- New York, NY 10012
212-965-1999**

Gemstar, Gist's largest competitor with a dominant position in the TV program guide marketplace, holds patents on a system that delivers TV listings independent of the cable-TV system, using the unseen scan lines in over-the-air broadcast analog TV (the vertical blanking interval, or VBI). Besides being a proprietary system that is only available to Gemstar's customers, the Commission ruled in 2001 that a cable-TV system can lawfully strip these listings out of the broadcast signal when it is re-transmitted over cable-TV (*Memorandum Opinion and Order*, FCC 01-354, Dec. 4, 2001, in the matter of Gemstar v. Time Warner Cable.) As the nation moves to pure digital TV transmission, this VBI analog TV technology will become obsolete; and the F.C.C.'s decision that program guide data carried by broadcast TV does not fall under the "must carry" rules for cable-TV make it impractical for Gist to develop an alternative, proprietary digital-TV delivered EPG service for cable-TV as Gemstar has argued for in their comments. We note that in Gemstar's comments, they argue for carriage of their proprietary data in the PSIP portion of DTV broadcast signals when re-transmitted over cable-TV. Such a rule would benefit a single company.

The solution we propose, by contrast, would benefit competition in electronic program guides. It would not require carriage of new data, but would utilize data that is already being sent over cable-TV systems and that consumers are already paying for.

From Gist's point of view, the reluctance of the cable-TV industry to make guide data available to "Plug and Play" TVs, the unreliability of broadcast-TV for delivering listings to cable-compatible TV sets, and Gemstar's aggressive history of patent litigation against would-be competitors creates a powerful barrier to competition in the U.S. cable-TV EPG market.

From a consumer perspective, much would be gained from a truly competitive marketplace for electronic program guides. As the number of TV channels proliferates, the need for program guides to navigate these vast choices becomes more urgent.

But not all program guides are the same. Gist takes pride in creating program guides that combine ease-of-use with advanced functionality. Gist has developed program guides that allow viewers to customize their guides, so that they see only the channels they want to view, or so that adult programs can be blocked from appearing on the guide when children are using it. Gist offers advanced search technology that helps viewers locate the exact kinds of programs that will interest them. And Gist is developing advanced applications for organizing hundreds or even thousands of hours of recorded programs, and which combine the listings of recorded programs with listings for live TV, so that when a viewer turns on the TV, they can quickly and easily find all of their favorite programs, recorded and live, from one convenient user interface.

Gist has met with TV manufacturers and technology partners who would be interested in incorporating Gist's guides into their products. However, without a reliable way to utilize the raw data (TV listings) into a cable-compatible TV set, it is impossible for Gist to offer consumers this choice. Gist is thus hamstrung.

Gist believes that EPG guide data should be treated the same as the other unidirectional (one-way) signals a cable-TV system carries. When a consumer pays \$30 a month or more for cable-TV service, they are paying for a package of channels as well as a guide to find out what's on these channels.

Now, thanks to the "Plug and Play" agreement, the consumer will no longer need to lease a cable-TV set top box to see the channels they are paying for. But if they want to see a guide to those channels, they must abandon the advantages of the "Plug and Play" TV set and go back to using the leased set top box, to see the one and only guide that the cable-TV system offers.

Consider how different things would be if unidirectional cable-TV guide data is included in the "Plug and Play" agreement. A consumer would still have the choice of seeing the cable-TV system's own guide by leasing their set top box. But now, with guide data flowing directly into the TV sets, the "cable compatible" TV set could include the crucial missing link between the viewer and the programming: the guide. TV set manufacturers would compete to provide the most user-friendly, feature-rich program guide. It would truly lay the groundwork for innovation.

Unlike advanced two-way services that were not included in the Phase I "Plug and Play" agreement (and which are part of the Phase II discussions), the delivery of guide data is purely one-way (unidirectional). The unidirectional listings data is completely analogous to the one-way delivery of the TV channels themselves, and logically belongs in the Phase I agreement. (Although these guides are commonly referred to as "interactive program guides," or IPGs, the interaction takes place between the user and the set top box, or TV set.) There are no technical impediments whatsoever to including guide data in the one-way POD agreement. There are no security issues either, as guide data is available at even the most basic subscription level.

To draw an analogy, imagine if a highway got built that only one type of car could drive on. After some time the government stepped in and said that other cars must be allowed to use the highway too, as long as they're safe and compatible. And then imagine if the owners of the highway said, "Other cars can use this highway, but only people using *our* cars will be able to see the road signs along the way." While complying with the law, this would frustrate the intent to open up the highway to use by other cars.

Gist is asking the FCC, in codifying the "Plug and Play" agreement into law, to extend the breadth of the agreement to include program guide data as part of this agreement.

Thank you for your consideration of this matter.

Sincerely,

James Cantalini
President and CEO

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